IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10617 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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11 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

Whether it is to be circulated to the civil judge ?

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MARWADI RAMESHBHAI MANCHHARAM &10 - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR YV BRAHMBHATT for Petitioner No(s).: 1,2,
3,4,5,6,7,8,9,10.

Mr H L Jani, AGP for Respondent No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 1,2,3.

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CORAM :THE HON'BLE MR.JUSTICE KSHITIJ R.VYAS
THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/06/2005

ORAL JUDGMENT

(Per : THE HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr H L Jani, learned AGP waives service of rule for the respondents. With the consent of the parties, this petition is heard today and it can now finally be disposed of.

1. In this petition, the petitioners have made a grievance that they are hutment dwellers and they are staying in a locality known as Kalyanpura in the town of Kalol for the last 35 years but now they are being thrown out of the place by respondents without resorting to due process of law. It is submitted that though notice under section 61 of the Bombay Land Revenue Code (hereinafter referred to as 'the Code') is issued without affording any opportunity of hearing to the petitioners and without permitting them to substantiate their case by producing appropriate documents and without passing any order on notice under section 61 of the Code, notice under section 202 of the Code has been issued calling upon the petitioners to vacate the premises within three days of the receipt of the notice, failing which the same would be demolished by the respondents for which cost would have to be borne by the petitioners.
2. This fact is not disputed and it is an admitted position. In Special Civil Application No.10744 of 2005 challenging the notice issued under section 61 in similar circumstances, we have interfered and given certain directions. Similarly, in the present petition also it is necessary for us to give certain directions which are as follows:

a) Respondent no.3 is directed to grant opportunity to the petitioners of personal hearing and also permit them to submit material which may substantiate their case.

b) After the hearing is over, the said respondent shall pass appropriate order in accordance with the merits of the case and assign reasons for granting or refusing to grant the request of the petitioners.

1. If the order is against the petitioners, the same will not be implemented for a period of 15 days from the date of the order and the said order will also be communicated to the petitioners forthwith. Till then, the possession of the petitioners shall not be disturbed.

d) The impugned Notice under section 202 dated 19.5.2005 is quashed.

With these directions, this petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp